

No. 3683

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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T. B. STORY and L. P. WORK, Co-partners Doing  
Business Under the Firm Name and Style of  
STORY & WORK,

Plaintiffs in Error,

vs.

R. N. STANFIELD,

Defendant in Error.

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Transcript of Record

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Upon Writ of Error to the United States District  
Court of the District of Oregon.

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FILED

JAN 30 1921

F. D. MCNICKTON,

CLERK



No. \_\_\_\_\_

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**Circuit Court of Appeals**

**For the Ninth Circuit.**

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## **Names and Addresses of Attorneys of Record**

FREDERICK H. DRAKE, Esq., of Portland, Oregon, and C. B. NOLAN Esq., and WM. SCALION, Esq., both of Helena, Montana,

For Plaintiffs in Error.

MESSRS. BAUER, GREENE and McCURTAIN, of Portland, Oregon, and ED. R. COULTER, of Weiser, Idaho,

For Defendant in Error.

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## **Transcript of Record**

In the District Court of the United States for the  
District of Oregon.

March Term 1919.

BE IT REMEMBERED, that on the 17th day of June, 1919, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint in words and figures as follows, to-wit:

In the District Court of the United States, District of  
Oregon.

T. B. STORY and L. P. WORK, Co-partners Doing  
Business Under the Firm Name and Style of  
STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

## **Complaint**

The plaintiffs above named complain of the defendant, and for cause of action allege:

### **I.**

That the plaintiffs, T. B. Story and L. P. Work, are now, and at all of the times hereinafter mentioned were, co-partners residing in Gallatin County, State of Montana, and doing business under the name and style of Story & Work, and as such were engaged at all of said times in buying and selling sheep and ewes; that their place of business is at Bozeman in said state, and at all of the times herein mentioned, they were and are citizens and residents of the state of Montana.

### **II.**

That during all of the times herein mentioned and now the defendant R. N. Stanfield was and is a resident and citizen of the state of Oregon.

### **III.**

That on the 26th day of May, 1917, the defendant sold to plaintiffs seven thousand (7,000) head of yearling ewes at the agreed price of eleven and 50/100 dollars (\$11.50) per head, delivery of same to be made July 1, 1917, at White Sulphur Springs, Montana, and at Three Forks, Montana.

### **IV.**

That the defendant failed and refused to carry out his contract and failed and refused to make delivery to plaintiffs of said ewes at the time provided for in said contract, or at all.



V.

That by reason of the breach of said contract by defendant, plaintiffs have been damaged in the sum of twenty-one thousand dollars (\$21,000.00).

WHEREFORE, plaintiffs demand judgment against the defendant for the sum of twenty-one thousand dollars (\$21,000.00), and for costs of suit.

F. H. DRAKE,

WM. SCALLON and

C. B. NOLAN.

Attorneys for Plaintiffs.

State of Montana,

County of Gallatin,—ss.

L. P. Work, being first duly sworn upon oath, deposes and says: That he is one of the plaintiffs named in the foregoing entitled action; that he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated on information and belief, and as to those matters he believes it to be true.

L. P. WORK.

Subscribed and sworn to before me this 27th day of May, 1919.

[Notarial Seal]

E. H. SCHUMACHER,

Notary Public for the State of Montana, Residing at  
Bozeman, Montana.

My commission expires Jan. 5, 1920. .

Endorsed: Title of Court and Cause. Complaint.

Filed June 17, 1919. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 21st day of January, 1920, there was duly filed in said Court a Demurrer in words and figures as follows, to-wit:

In the District Court of the United States, District of Oregon.

T. B. STORY and L. P. Work, Co-partners Doing  
Business Under the Firm Name and Style of  
STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Demurrer**

Comes now the defendant and demurs to the Complaint of Plaintiff and as grounds of Demurrer alleges:

#### **I.**

That said Complaint fails to state facts sufficient to constitute cause of action against this Defendant.

ED R. COULTER,

Attorney for Defendant.

Endorsed: Title of Court and Cause.

Filed Jan. 21, 1920. G. H. Marsh, Clerk.

---

AND AFTERWARDS, to-wit, on the 21st day of January, 1920, there was duly filed in said Court, a Motion, in words and figures as follows, to-wit:

In the District Court of the United States District of  
Oregon.

T. B. STORY and L. P. WORK, Co-partners, Doing  
Business Under the Firm Name and Style of  
STORY & WORK,

Plaintiffs.

vs.

R. N. STANFIELD,

Defendant.

### **Motion**

Comes now Defendant and moves the Court to require Plaintiff to make his complaint more definite and certain, in the following particulars:

#### **I.**

That it does not appear in said complaint whether the alleged sale of sheep mentioned in Paragraph III of the complaint was by a written contract. In the event that said alleged sale of yearling ewes is by written contract that the Plaintiff be required to attach copy of said written contract as a part of his Complaint.

ED R. COULTER,

Attorney for Defendant.

Endorsed: Title of Court and Cause. Motion.

Filed Jan. 21, 1920. G. H. Marsh, Clerk.

---

AND AFTERWARDS, to-wit, on the 21st day of June, 1920, there was duly filed in said Court an Amended Complaint in words and figures as follows, to-wit:

In the District Court of the United States, District of  
Oregon.

T. B. STORY and L. P. WORK, Co-partners Doing  
Business Under the Firm Name and Style of  
STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Amended Complaint**

Now come the plaintiffs above named, and file this  
their amended complaint, leave for doing so having  
been first obtained, and for cause of action against  
the defendant, complain and allege:

#### **I.**

That at all of the times hereinafter mentioned, the  
plaintiffs, T. B. Story and L. P. Work, were and are  
co-partners in business residing at Bozeman, Gallatin  
County, Montana, doing business there under the firm  
name and style of Story & Work, and at all of such  
times and as such were engaged in the livestock busi-  
ness, and as such bought and sold ewes, and at all of  
said times said plaintiffs were and are residents and  
citizens of the state of Montana.

#### **II.**

That at all of the times hereinafter mentioned, the  
defendant R. N. Stanfield was and still is a resident  
and citizen of Stanfield, Umatilla County, State of  
Oregon

## III.

That at all of the times hereinafter mentioned, one William Rea, Jr. was and now is a livestock broker, engaged in the business of buying and selling livestock on commission, and known to be such to said plaintiffs and defendant, and for many years prior to the 25th day of May, 1917, and in many transactions involving the sale of livestock, including sheep, the said Rea as such broker at divers times purchased from and sold to the said Stanfield, the said defendant, several thousand head of sheep.

## IV.

That on the 28th day of April, 1917, the said defendant entered into a contract with the plaintiffs through the said Rea, as broker as aforesaid, by the terms and provisions of which, the said Stanfield purchased from the said plaintiffs seven thousand (7,000) head of yearling ewes at a price agreed on, and under and by virtue of the terms of said contract, the said ewes were to be delivered by the said plaintiffs to the said Stanfield or order at White Sulphur Springs, Montana, and Three Forks, Montana, on July 1, 1917; that the said Stanfield at said time paid to the said Story & Work, as part payment for the purchase price of said ewes, the sum of four thousand dollars (\$4,000.00), copy of which said agreement is hereto attached marked Exhibit "A" and made a part hereof.

## V.

That after said sale was made, as aforesaid, to the said Stanfield of said ewes through the said Rea as

broker as aforesaid, and on the 25th day of May, 1917, the said plaintiffs desiring to repurchase from the said Stanfield, the defendant herein, the said ewes and to purchase all of his rights in the said contract for sale of said ewes, as aforesaid, the said Rea acting as broker in that behalf, sent to the said defendant at his home in Oregon, from Billings in the State of Montana, a telegram reading as follows:

“May 25, 1917.

R. N. Stanfield,  
Stanfield, Oregon.

Wire lowest price you will sell the Seven Thousand Story and Work yearling ewes.

Wm. Rea, Jr.”

meaning thereby, as the defendant knew, the ewes theretofore purchased by the said Stanfield from the said plaintiffs as hereinabove referred to;

That in reply to said telegram, the said Stanfield, on the afternoon of the 26th day of May, 1917, sent to the said Rea at Billings, Montana, a telegram from Portland, Oregon, reading as follows:

“Wm. Rea,  
Billings, Mont.

Lowest price on Story and Work yearling ewes eleven fifty this subject to immediate acceptance.

(Signed) R. N. Stanfield.”

## VI.

That at the time of the receipt of said telegram at Billings on the afternoon of the said 26th day of May, 1917, the said Rea had left the said city of Billings for the city of Butte, in the State of Montana, and the said telegram was forwarded to him by wire to



the said city of Butte, where the same was received by him at about eight o'clock on the evening of that date, and immediately upon its receipt by him, he, the said Rea, accepted for himself and on behalf of the said Story & Work the offer so made, as aforesaid, by then and there delivering for transmission at the Western Union Telegraph Company's office at the city of Butte, prepaying the charge for transmission of same, a telegram directed to the said defendant at his home at Stanfield, Oregon, said telegram reading as follows:

"Butte, May 26, 1917.

R. N. Stanfield,  
Stanfield, Oregon.

Sold your Story and Work seven thousand yearling ewes eleven fifty. Mail you contract and check for seven thousand dollars tomorrow.

Wm. Rea, Jr."

and plaintiffs allege on information and belief that said telegram was thereupon sent to and received by the said Stanfield on the date named.

## VII.

Plaintiffs further aver that in connection with the said transactions herein set forth, there was a well-known custom in the livestock trade, to-wit, the sheep trade, according to which immediate acceptance, in the offer referred to, meant that the offer should be accepted at least within 24 hours after the same was made and in that connection plaintiffs allege that in the instant case the acceptance of the offer by the plaintiffs and by the said Rea in their behalf was an immediate acceptance.

## VIII.

Plaintiffs further aver that there was in the livestock, to-wit, the sheep trade, a custom and usage that where delivery of the livestock so sold was to be made in the future, there should be paid to the seller part of the purchase price not exceeding eight per cent of the estimated total price, unless otherwise agreed upon, and payable in money or negotiable instruments, and that transactions of that character could be carried on in the name of the broker without disclosing the principal's name;

That pursuant to said custom and agreeably to the terms of said contract of sale, and on the 27th day of May, 1917, the said Rea, for and in behalf of the plaintiffs, sent by mail postage prepaid, a letter addressed to the said defendant at Stanfield, Oregon, which letter enclosed a check for seven thousand dollars (\$7,000.00), and likewise enclosed said written memorandum of the contract of sale and purchase, copies of which letter, memorandum and check are hereto attached marked Exhibits "B", "B-1" and "B-2", and made a part of this Amended Complaint; that said check was good; that said Wm. Rea, Jr. Agt. had a checking account in the bank on which said check was drawn more than sufficient to pay the same, and that it would have been paid on presentation to said bank and was equivalent to cash.

## IX.

Plaintiffs further aver that although said letter containing said check and said memorandum was received by the said defendant in due course of mail, the said



defendant failed and neglected to advise the said Rea in any manner regarding same until the 14th day of June, 1917, when the said Rea received by mail a letter from the said Stanfield returning said check, copy of which letter is hereto attached marked Exhibit "C", and made a part of said Amended Complaint, which letter bears date June 12th, 1917.

X.

Plaintiffs further aver that the customs and usages hereinbefore mentioned were known to plaintiffs and defendant and to the said Rea, and said dealings as evidenced by said telegrams and letters and as conducted by the said Rea for and in behalf of the plaintiffs, were carried on agreeably to said usages and customs, and that the same were generally and uniformly observed in the case of sales of livestock and particularly of sheep.

XI.

Plaintiffs further aver that by the sending of said letter bearing date June 12th, 1917, and received by the said Rea on the 14th day of June, 1917, and by the return of the check hereinabove referred to, the said Stanfield wrongfully and without cause breached the said contract theretofore entered into by him with the plaintiffs as evidenced by said telegrams and letters.

XII.

That by reason of said breach of said contract by the said defendant, plaintiffs have been damaged in

the sum of Twenty-one Thousand Dollars (\$21,000.00).

WHEREFORE, plaintiffs demand judgment against the defendant for the sum of Twenty-one Thousand Dollars (\$21,000.00), and for costs of suit.

WALSH, NOLAN & SCALLON,  
FREDERICK H. DRAKE,  
Attorneys for Plaintiffs.

### Exhibit "A"

REA BROTHERS

Live Stock Dealers

Billings, Mont.

THIS IS TO CERTIFY, That Story & Work of Bozeman, Mont., have this 28th day of April, 1917, bargained and sold to R. N. Stanfield or order, the following described Live Stock, and do hereby guarantee the title thereto, viz:

No. Head	Description	Brands	Price per Head	Time and Place of Delivery F. O. B. Cars.
About	7000 Head of yearling ewes		\$10.00	White Sulphur Springs and Three Forks, Mont., July 1st, 1917.
Any sick or cripple out not taken				
3600 Head now running near Logan balance near White Sulphur Springs.				

.....to weight.....pounds average or more.

Stock guaranteed to be in merchantable condition at time of delivery, and bought subject to Federal or State inspection.

Received in part payment for above mentioned stock  
\$4,000.00.

(Signed) STORY & WORK

Per (L. P. W.)

R. N. STANFIELD by Wm. Rea, Jr.

(Witness) .....

**Exhibit "B"**

HOTEL PLACER

Maurice S. Weiss

Manager

Helena, Montana, May 27, 1917.

Mr. R. N. Stanfield,  
Stanfield, Oregon.

Dear Senator:

As per wires exchanged I am enclosing you contract on the 7,000 Story & Work yearling ewes also check for \$7,000, advanced payment. I will deliver the ewes myself and when I do I will send you a draft for balance due you. Kindly sign contract where I have marked X. Keep one copy and return the other to me at Billings, Mont.

Hoping you are getting along fine and dandy, I remain

Yours truly,

W. R. Jr.

**Exhibit "B-1"**

REA BROTHERS

Live Stock Dealers

Billings, Mont.

Clear Range

BOOKED: Sheep Bought

THIS IS TO CERTIFY, That R. N. Stanfield of Stanfield, Oregon, have this 26th day of May, 1917, bargained and sold to Wm. Rea Jr. Agt. Billings, Mont. or order, the following described Live Stock, and do hereby guarantee the title thereto, viz:

No. Head	Description	Brands	Price per Cwt. Head	Time and Place of Delivery F. O. B. Cars.
About	7,000 Yearling Ewes, being same ewes bought from Story & Work of Bozeman, Mont.		\$11.60	White Sulphur Springs and Three Forks, Mont., July 1st, 1917.

.....to weigh.....pounds average or more.

Stock guaranteed to be in merchantable condition at time of delivery, and bought subject to Federal or State inspection. All sheep to be dry fleeces, and lambs separated from their mothers, and weighed twelve hours off feed and water at.....

Received in part payment for above mentioned stock \$7,000.

(Signed).....

(Witness).....

3600—3 Forks 3400 W. S. Spgs. Wm. Rea Jr. Agt.

**Exhibit "B-2"**

Bozeman, Mont. May 26th 1917 No.....

COMMERCIAL NATIONAL BANK 93-58

Pay to the order of R. N. Stanfield.....\$7000.00

Seven Thousand .....Dollars.

Wm. Rea Jr.

Agt.

Collectable at par through the Federal

Reserve Bank of Minneapolis

Adv price 7000 ylng ewes.

United States of America,

District of Oregon,

County of Multnomah,—ss.

FREDERICK H. DRAKE, being first duly sworn upon oath, deposes and says: That I am one of the attorneys for the plaintiffs in the foregoing entitled action; that I have read the foregoing Amended Complaint and knows the contents thereof, and that the same is true as I verily believe.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are absent from the County of Multnomah, wherein deponent is and resides.

FREDERICK H. DRAKE.

Subscribed and sworn to before me this 14th day of June, 1920.

[Notarial Seal]

C. A. HILL,

Notary Public for the State of Oregon, Residing at  
Portland, Oregon.

My commission expires October 15, 1923.

Due personal service of within Amended Complaint made and admitted and receipt of copy acknowledged this 15th day of June, 1920.

A. H. McCURTAIN of Attorneys for Def.

Endorsed. Title of Court and Cause. Amended complaint.

Filed June 21, 1920. G. H. Marsh, Clerk.

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AND AFTERWARDS, to-wit, on the 5th day of August, 1920, there was duly filed in said Court, a Demurrer to Amended Complaint in words and figures as follows, to-wit:

In the District Court of the United States for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners Doing  
Business as STORY & WORK,

Plaintiffs,

vs.

R N. STANFIELD,

Defendant.

### **Demurrer to Amended Complaint**

Now comes the defendant and demurs to the amended complaint herein on the ground that the same does not state facts sufficient to constitute a cause of action against the defendant.

E. R. COULTER,  
BAUER, GREENE & McCURTAIN,  
Attorneys for Defendant.



[The following Exhibit is here inserted in this transcript in accordance with stipulation between respective counsel, which stipulation follows the exhibit. The original stipulation is on file herein.]

EXHIBIT "C"

"Stanfield, Oregon,

June 12th, 1917.

Wm. Rea, Jr., Billings, Mont.

Dear Sir:—Referring to your letter and telegrams concerning the Story & Work yearling ewes, you will note that I quoted you a price for immediate acceptance, and as I did not receive a reply, I concluded that you did not want them. The price on yearlings was steadily advancing, and I was unable to hold them for you at the price quoted. I am returning herewith your check for \$7,000.00 as I am unable to sell these ewes at the price offered in your contract.

Yours truly,

R. N. STANFIELD,

by Don Pruitt."

DP.

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT.

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(TITLE OF CAUSE.)

STIPULATION.

WHEREAS, in the above entitled cause in the Amended Complaint reference is made to a certain

letter bearing date June 12th, 1917, of which the following is a true copy:

(Copy of letter is here set forth)

And,

WHEREAS, said letter is referred to in said amended complaint and is made a part of the complaint as an exhibit and is designated in the complaint as Exhibit "C"; and,

WHEREAS, through oversight the said letter wasn't attached to said complaint, and in the transcript now on file in the Circuit Court of Appeals for the Ninth Circuit an omission of this letter occurs;

IT IS HEREBY STIPULATED and AGREED that the said letter marked Exhibit "C" may be made a portion of said transcript, and that a separate sheet may be printed containing said letter and inserted in said transcript, so marked so as to constitute a portion of the said complaint.

DATED January 31, 1921.

F. H. DRAKE,  
WM. SCALLON,  
C. B. NOLAN,

Attorneys for Plaintiffs in Error.

ED. R. COULTER,  
BAUER, GREENE and McCURTAIN,  
Attorneys for Defendant in Error.



I, Thos. G. Greene, one of defendant's attorneys, certify that in my opinion the foregoing demurrer to the amended complaint herein is well founded in law.

THOS. G. GREENE.

Portland, Oregon, July 30th, 1920.

State of Oregon,

County of Multnomah,—ss.

Due service of the within Demurrer is hereby accepted in said county this .....day of July, 1920, by receiving a copy thereof, duly certified to as such by T. G. Greene of attorneys for defendant.

F. H. DRAKE,

of Attorneys for Plaintiffs.

Endorsed: Title of Court and Cause. Demurrer to Amended Complaint.

Filed August 5, 1920, G. H. Marsh, Clerk.

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AND AFTERWARDS, to-wit, on the 20th day of September, 1920, there was duly filed in said Court, an Opinion, in words and figures as follows, to-wit:

In the District Court of the United States, for the  
District of Oregon.

T. B. STORY, et al.,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

Portland, Oregon, September 18th, 1920.

Memorandum by Bean, District Judge:

The demurrer to the complaint will be sustained.

It is elementary law that to constitute a contract there must be a meeting of the minds of the parties not only as to the subject matter but also as to the extent and character of the obligations assumed by each, and if the alleged contract consists of an offer by one party by mail or by telegraph, there must be an unconditional acceptance thereof by the other in accordance with the terms of the offer, and if any conditions are attached to the acceptance or it goes beyond the offer, no contract obligation arises. (*Glenn v. Birch & Sons Con.* 158 Pac. 834.)

Now the offer of the defendant contained in his wire of May 25th was not unconditionally accepted by Rae nor indeed was it accepted at all in terms. Rae does not say that he will take the sheep at the price quoted by the defendant but that he had sold them, presumably as the agent of the defendant. To whom the sale was made, the time of delivery and the terms of deferred payments not stated. Moreover his wire of acceptance if it can be so construed, was not unconditional but on its face showed that the transaction was not completed and would not be until the contract which he intended mailing to the defendant was executed.

It is true the complaint alleges that there existed in the livestock trade a well known custom and usage governing the terms of payment for stock where delivery was to be made in the future, but in the instance case it appears from the complaint that the plaintiff was endeavoring through Rae as his agent not to purchase stock belonging to the defendant, but defendant's

rights under a contract between him and plaintiff of date April 28th, and clearly the minds of the parties never met as to the terms and conditions of such purchase.

---

AND AFTERWARDS, to-wit, on Monday, the 20th day of September, 1920, the same being the 67th Judicial day of the Regular July term of said court; present the Honorable R. S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

No. L.—8459.

T. B. STORY and L. P. WORK,

vs.

R. N. STANFIELD.

September 20, 1920.

This cause was heard by the Court upon the demurrer of defendant to the amended complaint herein, plaintiff appearing by Mr. Frederick H. Drake, of counsel, and defendant by Mr. E. R. Coulter and Mr. Thomas G. Greene, of counsel. Upon consideration whereof,

IT IS ORDERED THAT the demurrer to the amended complaint herein be and the same is hereby sustained.

---

AND AFTERWARDS, to-wit, on the 9th day of November, 1920, the same being the ..... Judicial day of the Regular November term of said Court; present the Honorable Chas. E. Wolverton, United States Dis-

strict Judge, presiding, the following proceedings were had in said cause, to-wit:

In the United States District Court, District of  
Oregon.

T. B. STORY AND L. P. WORK Co-partners, Doing  
Business Under the Firm Name of STORY &  
WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Order of Dismissal**

This cause having heretofore come on regularly for hearing on demurrer to the amended complaint and thereafter an order having been duly entered herein on the 20th day of September, 1920, sustaining said demurrer; and plaintiffs having filed no further pleading herein although the time therefor has expired and it now appearing that plaintiffs have elected to stand on said demurrer to the amended complaint and decline to further plead, on motion of Thomas G. Greene of counsel for defendant, it is

ORDERED AND ADJUDGED that this action be dismissed and that defendant have judgment against plaintiffs for his costs and disbursements herein taxed at \$15.95.

CHAS. E. WOLVERTON, Judge.

Endorsed. Title of Cause. Judgment Order.

Filed and Entered November 9, 1920, G. H. Marsh,  
Clerk.

AND AFTERWARDS, to-wit, on the 13th day of December, 1920, there was duly filed in said Court, Petition for Writ of Error in words and figures as follows, to-wit:

In the District Court of the United States, for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners Doing  
Business as STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Petition for Writ of Error**

To the Honorable Robert S. Bean, Judge of the District Court aforesaid:

T. B. Story and L. P. Work, co-partners doing business as Story & Work, plaintiffs above named, feeling aggrieved by the judgment rendered and entered in the above entitled cause in the District Court of the United States for the District of Oregon on the 9 day of November, 1920, and complaining that in the record and proceedings had in said cause, and also in the rendition and entry of said judgment, manifest error has occurred to the great damage of the said plaintiffs, as more fully appears from the assignment of errors which is filed with this petition, come now and petition the above entitled Court for an order allowing said plaintiffs to prosecute a writ of error out of the United States Circuit Court of Appeals in and

for the Ninth Circuit, and that such writ of error may issue out of the said United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to said Circuit Court of Appeals, under and according to the laws of the United States, in that behalf made and provided, and for such other and further order as to the Court may seem meet

FREDERICK H. DRAKE,  
C. B. NOLAN,  
WM. SCALLON,  
Attorneys for Plaintiffs.

Due personal service of within Petition for Writ of Error made and admitted and receipt of copy acknowledged this 13th day of December, 1920.

THOS. G. GREENE,  
of Attorneys for Defendant.

Endorsed. Title of Court and Cause. Petition for Writ of Error.

Filed Dec. 13, 1920, G. H. Marsh, Clerk.

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AND AFTERWARDS, to-wit, on the 13th day of December, 1920, there was duly filed in said Court, Assignment of Errors, in words and figures as follows, to-wit:



In the District Court of the United States, for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners Doing  
Business as STORY & WORK,

Plaintiffs in Error,

vs.

R. N. STANFIELD,

Defendant in Error.

### **Assignment of Errors**

Now come the plaintiffs in error, T. B. Story and L. P. Work, co-partners doing business as Story & Work, and, in connection with their petition for a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit directed to the above entitled court, say that in the record, the proceedings and the final judgment made and entered in said cause on the 9th day of November, 1920, manifest errors have intervened to the prejudice of the plaintiffs in error, of which they make the following assignments, to-wit:

#### **I.**

The court erred in sustaining the demurrer interposed by the defendant to plaintiffs' amended complaint.

#### **II.**

The court erred in holding that the plaintiffs' amended complaint did not state a cause of action against the defendant.

## III.

The court erred in ordering and entering judgment for the defendant.

WHEREFORE, plaintiffs in error pray that said judgment be reversed with directions that the cause be remanded to the United States District Court in and for the District of Oregon, with directions to reverse the said judgment and make an order overruling the demurrer to the plaintiff's complaint.

FREDERICK H. DRAKE,  
C. B. NOLAN,  
WM. SCALLON,

Attorneys for Plaintiffs in Error.

Due personal service of the foregoing Assignment of Errors made and admitted and receipt of copy thereof acknowledged this 13 day of December, 1920.

THOS. G. GREENE,  
of Attorneys for Defendant in Error.

Endorsed. Title of Court and Cause. Assignment of Errors.

Filed December 13, 1920, G. H. Marsh, Clerk.

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AND AFTERWARDS, to-wit, on Tuesday, the 14th day of December, 1920, the same being the 36th Judicial day of the Regular November term of said Court; present the Honorable R. S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:



In the District Court of the United States for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners Doing  
Business as STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Order Allowing Writ of Error**

On motion of Frederick H. Drake, C. B. Nolan, Esq., and Wm. Scallon, Esq., attorneys for plaintiffs herein,

IT IS HEREBY ORDERED that a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore filed and entered herein, be, and the same is hereby allowed; that a certified transcript of the record and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit, and that a citation issue in due course.

IT IS FURTHER ORDERED that the bond on error be fixed at the sum of Three Hundred Dollars (\$300.00).

Dated December 14, 1920.

R. S. BEAN, Judge.

Due personal service of within order allowing Writ of Error made and admitted and receipt of copy acknowledged this 14th day of December, 1920.

THOMAS S. GREENE,  
of Attorneys for Defendant.

Endorsed. Title of Court and Cause. Order allowing Writ of Error.

Filed Dec. 14, 1920, G. H. Marsh, Clerk.

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AND AFTERWARDS, to-wit, on the 16th day of December, 1920, there was issued out of said Court a Writ of Error in words and figures, as follows, to-wit:

In the District Court of the United States for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners doing  
business as STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Writ of Error**

United States of America,—ss.

The President of the United States of America, to the Honorable Chas. E. Wolverton, Judge of the United States District Court for the District of Oregon, and to the District Court of the United States for the District of Oregon, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in said District Court, before you, between T. B. Story and L. P. Work, as Co-partners doing business as Story & Work, plaintiffs, and R. N. Stanfield defendant, manifest error hath occurred and happened to the said plaintiffs, T. B. Story and L. P. Work, as co-

partners doing business as Story & Work, as by their petition for a writ of error and assignment of errors appears, we being willing that such error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you if judgment therein given that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date of this writ in said Circuit Court of Appeals, to be then and there held, that, the records and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States Supreme Court, this 16th day of December A. D. 1920, and of the Independence of the United States the one hundred and forty-fifth.

G. H. MARSH,  
Clerk of the District Court of the United States. District of Oregon.

By F. S. BUCK, Chief Deputy.

Due personal service of the foregoing Whit of Error

made and admitted and receipt of copy acknowledged this 16th day of December, 1920.

THOS. G. GREENE,

By M. L. N.

of Attorneys for Defendant.

Service of above Writ of Error made this 16th day of December, 1920, upon the District Court of the United States for the District of Oregon, by filing with me as Clerk of said Court a duly certified copy of said Writ of Error.

G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

### **Answer of Court to Writ of Error**

The answer of the Honorable, the District Judge of the United States for the District of Oregon, to the foregoing writ:

The record and proceedings whereof mention is within made, with all things touching the same, I hereby certify, under the seal of said District Court, to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court.

[Seal]

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Clerk.

AND AFTERWARDS, to-wit, on the 16th day of December, 1920, there was issued out of said Court, a Citation in words and figures, as follows, to-wit:

In the District Court of the United States for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners doing  
business as STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Citation**

United States of America,—ss.

To R. N. Stanfield, defendant herein, and to Edward R. Coulter, Esq., and Messrs. Bauer, Green & McCurtain, his attorneys:

You are hereby notified that in a certain cause wherein T. B. Story and L. P. Work, Co-partners doing business as Story & Work are plaintiffs and R. N. Stanfield is defendant, pending in the District Court of the United States for the United States for the District of Oregon, a writ of error has been allowed and granted to said plaintiffs to the Circuit Court of Appeals of the United States for the Ninth Circuit. You are hereby cited and admonished to be and appear in said Circuit Court of Appeals at the City of San Francisco, in the State of California, within said Ninth Circuit, thirty days after the date of this citation, to show cause, if any there be, pur-

suant to said writ of error, why the judgment made and entered in said cause in said District Court should not be corrected and speedy justice done the parties in that behalf.

Dated this 16th day of December A. D. 1920.

R. S. BEAN,

U. S. District Judge for the District of Oregon.

Due personal service of within Citation made and admitted and receipt of copy acknowledged this 16th day of December, 1920.

THOS. G. GREENE,  
of Attorneys for Defendant.

Endorsed: Title of Court and Cause. Citation.

Filed Dec. 16, 1920, G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 16th day of December, 1920, there was duly filed in said Court, Bond on Writ of Error, in words and figures as follows, to-wit:

In the District Court of the United States for the  
District of Oregon.

T. B. STORY and L. P. WORK, Co-partners doing  
business as STORY & WORK,

Plaintiffs,

vs.

R. N. STANFIELD,

Defendant.

### **Bond on Writ of Error**

KNOW ALL MEN BY THESE PRESENTS,  
That we, T. B. Story and L. P. Work, Co-partners doing business as Story and Work, as principals, and



FIDELITY & DEPOSIT COMPANY OF MARYLAND, as surety, are held and firmly bound unto R. N. Stanfield in the sum of Three Hundred Dollars (\$300.00), lawful money of the United States, to be paid to him and to his executors, administrators and successors, to which payment well and truly to be made we bind ourselves, jointly and severally, and each of our successors and assigns, firmly by these presents.

SEALED with our seals and dated this 15th day of December, 1920.

WHEREAS, the above named plaintiffs T. B. Story and L. P. Work, Co-partners doing business as Story & Work, are about to petition for a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled case;

NOW, THEREFORE, the condition of this obligation is such that if the above named plaintiffs shall prosecute their writ to effect, and answer all costs, if they fail to make their plea good, then this obligation shall be void, otherwise to remain in full force and effect.

T. B. STORY,

L. P. WORK,

FIDELITY & DEPOSIT COMPANY  
OF MARYLAND,

By R. E. PINNEY,

Attorney in Fact.

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The foregoing bond on error is hereby approved this 16th day of Dec., 1920.

R. S. BEAN, Judge.

Due personal service of within bond on writ of error made and admitted and receipt of copy acknowledged this 16th day of December, 1920.

THOS. G. GREENE,  
of Attorneys for Defendant.

Endorsed: Title of Court and Cause. Bond on Writ of Error.

Filed Dec. 16, 1920, G. H. Marsh, Clerk.

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AND AFTERWARDS, to-wit, on the 16th day of December, 1920, there was duly filed in said Court, Praeipce for Transcript of Record, in words and figures as follows, to-wit:

In the District Court of the United States for the  
District of Oregon.

T. B. STORY AND L. P. WORK, Co-partners doing  
business as STORY & WORK,

Plaintiffs in Error,

vs.

R. N. STANFIELD,

Defendant in Error.

### **Praeipce for Transcript of Record**

To Edward R. Coulter, Esq., and Messrs. Bauer, Green & McCurtain, attorneys for Defendant in Error, and to George H. Marsh, Esq., Clerk of said Court:

YOU AND EACH OF YOU WILL PLEASE  
TAKE NOTICE That the undersigned, the attorneys  
for the plaintiffs in error above named, hereby serve



upon you, and each of you, this præcipe in conformity with the rules of court, to indicate to you the portions of the records and files in the above entitled cause which said plaintiffs in error desire to and will incorporate in their transcript of record on writ of error herein, to-wit, the writ of error issued herein on the 16th day of December, 1920, to have judgment hereinbefore rendered and entered herein reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and the Clerk of said District Court will incorporate and include in said transcript the following:

1. The judgment roll or final record in said cause consisting of the complaint, demurrer to complaint, motion, amended complaint and demurrer, to amended complaint, order for judgment, opinion and final judgment;
2. Petition for writ of error and order allowing same;
3. Assignment of errors filed with petition for writ of error;
4. Writ of error, and bond or error.
5. Citation on writ of error and acknowledgement of service by defendant in error.
6. Copy of this præcipe.

FREDERICK H. DRAKE,  
C. B. NOLAN,  
WM. SCALLON,  
Attorneys for Plaintiffs in Error.

Due personal service of within Præcipe made and admitted and receipt of copy acknowledged this 16th day of December, 1920.

THOS. G. GREENE,

of Attorneys for Defendant.

Endorsed: Title of Court and Cause. Præcipe for Transcript of Record.

Filed Dec. 16, 1920, G. H. Marsh, Clerk.

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**Certificate of Clerk U. S. District Court to  
Transcript of Record**

United States of America,  
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth District, that the foregoing volume, consisting of 34 pages, numbered consecutively from 1 to 34, inclusive, is a full, true and correct transcript of the record and all proceedings had in said cause, and of the whole thereof, required to be incorporated in the record on appeal therein by the præcipe of the plaintiffs in error, as appears from the original records and files of said court in my custody as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation and writ of error issued in said cause.

I further certify that the costs of the transcript of

record amount to the sum of \$..... and have been paid by the plaintiffs in error.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Portland, Oregon, this .....th day of January, 1921.

[Seal]

.....  
Clerk.

